

## PART 712—CREDIT UNION SERVICE ORGANIZATIONS (CUSOs)

Sec.

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AUTHORITY: 12 U.S.C. 1756, 1757(5)(D) and (7)(I), 1766, 1782, 1784, 1785, and 1786.

SOURCE: 63 FR 10756, Mar. 5, 1998, unless otherwise noted.

### § 712.1 What does this part cover?

(a) This part establishes when a federal credit union (FCU) can invest in and make loans to credit union service organizations (CUSOs). CUSOs are subject to review by NCUA. This part does not apply to corporate credit unions that have CUSOs subject to § 704.11 of this chapter.

(b) All sections of this part apply to FCUs. Sections 712.2(d)(2)(ii), 712.3(d), 712.4 and 712.11(b) and (c) of this part apply to federally insured, state-chartered credit unions (FISCUs), as provided in § 741.222 of this chapter. FISCUs must follow the law in the state in which they are chartered with respect to the sections in this part that only apply to FCUs.

(c) As used in this part, federally insured credit union (FICU) means an FCU or FICU.

(d) As used in this part, CUSO means any entity in which a FICU has an ownership interest or to which a FICU has extended a loan, and that entity is engaged primarily in providing products or services to credit unions or credit union members, or, in the case of checking and currency services, including cashing checks and money or-

ders for a fee, and selling negotiable checks, including travelers checks, money orders, and other similar money transfer instruments (including international and domestic electronic fund transfers and remittance transfers, as defined in section 919 of the Electronic Fund Transfer Act, 15 U.S.C. 1693o-1), to persons eligible for membership in any credit union having a loan, investment or contract with the entity. A CUSO also includes any entity in which a CUSO has an ownership interest of any amount, if that entity is engaged primarily in providing products or services to credit unions or credit union members.

[78 FR 72548, Dec. 3, 2013]

### § 712.2 How much can an FCU invest in or loan to CUSOs, and what parties may participate?

(a) *Investments.* An FCU's total investments in CUSOs must not exceed, in the aggregate, 1% of its paid-in and unimpaired capital and surplus as of its last calendar year-end financial report.

(b) *Loans.* An FCU's total loans to CUSOs must not exceed, in the aggregate, 1% of its paid-in and unimpaired capital and surplus as of its last calendar year-end financial report. Loan authority is independent and separate from the 1% investment authority of subsection (a) of this section.

(c) *Parties.* An FCU may invest in or loan to a CUSO by itself, with other credit unions, or with non-credit union parties.

(d) *Measurement for calculating regulatory limitation.* For purposes of paragraphs (a) and (b) of this section:

(1) Total investments in and total loans to CUSOs will be measured consistent with GAAP.

(2) *Special rule in the case of less than adequately capitalized FICUs.* This rule applies in the case of a FICU that is currently less than adequately capitalized, as determined under part 702 of this chapter, or where the making of an investment in a CUSO would render the FICU less than adequately capitalized under part 702 of this chapter. Before making an investment in a CUSO:

(i) A less than adequately capitalized FCU, or an FCU that would be rendered less than adequately capitalized by the

recapitalization of a CUSO, must obtain prior written approval from the appropriate NCUA regional office if the making of the investment would result in an aggregate cash outlay, measured on a cumulative basis (regardless of how the investment is valued for accounting purposes, but limited to the immediately preceding seven (7) years) in an amount that is in excess of 1% of its paid-in and unimpaired capital and surplus; or

(ii) A less than adequately capitalized FISCU, or a FISCU that would be rendered less than adequately capitalized by the recapitalization of a CUSO, must obtain prior written approval from the appropriate state supervisory authority if the making of the investment would result in an aggregate cash outlay, measured on a cumulative basis (regardless of how the investment is valued for accounting purposes, but limited to the immediately preceding seven (7) years) in an amount that is in excess of the investment limit in the state in which it is chartered. A FISCU must also contemporaneously submit a copy of this request to the appropriate NCUA regional office. If there is no state limit in the state in which a FISCU is chartered, the requirements in paragraph (d)(2)(i) of this section will apply to that FISCU.

(e) *Divestiture.* If the limitations in paragraph (a) of this section are reached or exceeded because of the profitability of the CUSO and the related GAAP valuation of the investment under the equity method, without an additional cash outlay by the FCU, divestiture is not required. An FCU may continue to invest up to 1% without regard to the increase in the GAAP valuation resulting from a CUSO's profitability.

[63 FR 10756, Mar. 5, 1998, as amended at 64 FR 33187, June 22, 1999; 66 FR 65624, Dec. 20, 2001; 73 FR 79312, Dec. 29, 2008; 78 FR 32545, May 31, 2013; 78 FR 72548, Dec. 3, 2013]

### **§712.3 What are the characteristics of and what requirements apply to CUSOs?**

(a) *Structure.* An FCU can invest in or loan to a CUSO only if the CUSO is structured as a corporation, limited liability company, or limited partnership. An FCU may only participate in a

limited partnership as a limited partner. For purposes of this part, “corporation” means a legally incorporated corporation as established and maintained under relevant federal or state law. For purposes of this part, “limited partnership” means a legally established limited partnership as established and maintained under relevant state law. For purposes of this part, “limited liability company” means a legally established limited liability company as established and maintained under relevant state law, provided that the FCU obtains written legal advice that the limited liability company is a recognized legal entity under the applicable laws of the state of formation and that the limited liability company is established in a manner that will limit potential exposure of the FCU to no more than the amount of funds invested in, or loaned to, the CUSO.

(b) *Customer base.* An FCU can invest in or loan to a CUSO only if the CUSO primarily serves credit unions, its membership, or the membership of credit unions contracting with the CUSO *provided, however*, that with respect to any approved CUSO service, as set out in §712.5, that also meets the description of services set out in §701.30 of this chapter, this requirement is met if the CUSO primarily provides such services to persons who are eligible for membership in the FCU or are eligible for membership in credit unions contracting with the CUSO.

(c) *Federal credit union accounting for financial reporting purposes.* An FCU must account for its investments in or loans to a CUSO in conformity with “generally accepted accounting principles” (GAAP).

(d) *CUSO accounting; audits and financial statements; NCUA access to information.* A FICU must obtain a written agreement from a CUSO before investing in or lending to the CUSO that the CUSO will:

(1) Account for all of its transactions in accordance with GAAP;

(2) Prepare quarterly financial statements and obtain an annual financial statement audit of its financial statements by a licensed certified public accountant in accordance with generally accepted auditing standards. A wholly